

REGIONAL OPERATIONS CENTER INVESTIGATING COMMITTEE

DATE: January 8, 2014

CALLED TO ORDER: 5:34 p.m.

ADJOURNED: 8:15 p.m.

ATTENDANCE

Attending Members

Joseph Simpson, Chair
Monroe Gray
Jason Holliday
Benjamin Hunter
Maggie Lewis
Janice McHenry
William Oliver
Vop Osili
Marilyn Pfisterer
Jack Sandlin

Absent Members

AGENDA

Administrative Matters
Office of Corporation Counsel Directives and Administrative Procedures
Office of Finance and Management Business Practices
Development Agreement
Structure and Provisions of the Regional Operations Center Lease
Public Testimony

REGIONAL OPERATIONS CENTER INVESTIGATING COMMITTEE

The Regional Operations Center Investigating Committee of the City-County Council met on Wednesday, January 08, 2014. Chair Joseph Simpson called the meeting to order at 5:34 p.m. with the following members present: Monroe Gray, Jason Holliday, Benjamin Hunter, Maggie Lewis, Janice McHenry, William Oliver, Vop Osili, Marilyn Pfisterer and Jack Sandlin. Representing Council staff were General Counsel Fred Biesecker, Council Chief Financial Officer (CFO) Hope Tribble and Fiscal and Policy Analyst Ryan Kramer.

Chair Simpson asked the Clerk to name the committee members who have submitted their disclosure forms. The Clerk stated that Councillors Simpson, Gray, Hickman, Hunter, Mansfield and Osili have all submitted their forms; however, Councillors Freeman, McHenry, Pfisterer and Sandlin have not.

Chair Simpson encouraged the committee to participate in the tour of the Regional Operations Center (ROC), which will take place on Tuesday, January 28, 2014 at 9:30 a.m.

Councillor Oliver asked if he is required to sign the disclosure form. Chair Simpson stated that , because he is not a regular member of the committee he is not required to do so; however, his form is welcomed.

Chair Simpson moved the discussion along asking Mr. Biesecker to discuss the documents that have and have not been received from the document request log. Mr. Biesecker stated that he sent the document requests to Office of Corporation Counsel (OCC) and Mr. Carroll's attorney, David Brooks, on November 15, 2013. He stated that he has received some of the requested document from OCC (attached as Exhibit A), but has not received anything from Mr. Brooks.

Councillor Lewis asked when the requested documents can be expected. Andy Seiwert, OCC, stated that he forwards any ROC-related documents to Mr. Biesecker and expects all documents to be available within 30 days.

Councillor Pfisterer asked if OCC was involved with the ROC since the beginning of its creation. Mr. Seiwert stated that OCC was not involved in the lease negotiation. Councillor Pfisterer asked if OCC refused to sign the lease. Mr. Seiwert stated that he is unsure, as he was not OCC at the time.

Councillor Lewis asked what documents were used to settle the lease dispute. Mr. Seiwert stated that outstanding punch list items were used to get the matter resolved; however, the lease was not included.

Councillor Sandlin stated that he would like to see an analysis from OCC and Mr. Biesecker that addresses what the requests were to compare that information has been submitted.

Councillor Hunter stated that the requests are ambiguous and asked if they can be more specific in what is needed. Mr. Biesecker stated that the requests are broad because it is not completely known all of the documents that are needed.

Councillor Osili stated that he is concerned that committee is wasting its time because the requested documents have yet to be provided and asked how the committee can move forward.

Chair Simpson stated that he is very unhappy with the city's failure to cooperate and respond to the document requests. He stated that Mr. Biesecker sent the original document request to OCC almost two months ago on November 15, but has received very few of the documents requested and only partial responses on others. He asked Mr. Seiwert if he has received any information from Department of Public Safety (DPS). Mr. Seiwert stated that he has not.

Councillor Osili stated that he is willing to put into writing the specific items that he is requesting; however, if the documents are not received then he wants the items subpoenaed.

Councillor Gray stated that he is concerned that OCC has no record of all of the requested documents.

Chair Simpson asked Mr. Biesecker to discuss the possibility of the subpoena. Mr. Biesecker stated that he is hopeful that the City will give the requests the attention they deserve and the subpoena will not be needed.

Councillor Hunter stated that he would like to break down the specific requested documents.

Councillor Lewis stated that she agrees with Councillors Hunter and Osili; however, there needs to be better communication between the committee and OCC.

Chair Simpson asked if there is a record of the videos from the Board of Public Safety meetings. Mr. Biesecker stated that the board decided to stop recording the meetings in 2010.

Chair Simpson introduced Jason Dudich, Controller of the Office of Finance and Management (OFM), who gave a joint presentation for OFM and OCC on internal procedures, policies and business practices regarding the approval of leases.

Mr. Dudich briefly read through the presentation (attached as Exhibit B), making the following key points:

- Indiana Code 36-1-10:
 - governs leases at the local level: provides for the process and policies regarding a political subdivision as the lessee; sets forth who the political subdivision may lease from, the term of the lease, process for lease approvals, funding of leases, etc.; includes leases with and without an option to purchase at the end of the lease
 - A leasing agent may lease from a profit or not-for-profit organization, a partnership, association, limited liability company, or a firm or an individual; Leases without an option to purchase must include a termination for failure of funding clause; Leases without an option to purchase can be signed for up to 10 years, anything longer must be approved by the Department of Local Government Finance; Leases with an option to purchase can be up to 50 years

- The leasing agent may lease the structure only if:
 - It has received a petition signed by 50 or more taxpayers of the political subdivision and,
 - The fiscal body of the political subdivision has determined that there is a need to lease space
- Once lessor and the leasing agent have gained approval from the fiscal body and acquired the necessary taxpayer signatures, lease negotiations may commence
- Once lease terms are reached, but before the lease is executed, a public hearing must be held by the leasing agent
- Notice requirements for the public hearing are set forth in the law as to what should be provided at the public hearings, the timeframe for such hearings, etc.
- Once public hearing is completed and adjustments are made (if necessary), the leasing agent and the lessor may execute the lease
- Upon execution of the lease (as originally agreed upon or modified), the leasing agent shall give notice of execution of the lease by publication in accordance with IC 5-3-1
- If any of the lease payments are made from property taxes, in whole or part, 10 or more taxpayers who disagree with the execution of the lease may file a petition with the County Auditor within 30 days after the publication of notice of the executed lease
- The County Auditor shall immediately certify a copy of the petition and other information to the Department of Local Government Finance, who shall then fix a date and time for a hearing within no less than 5 days and no more than 30 days after the receipt of the documents
- Decisions by the Department of Local Government Finance are final

Mr. Biesecker asked if DPS or the Board of Public Safety held a public hearing with respect to the ROC lease in 2011. Mr. Dudich stated that he is uncertain if a hearing was held.

Mr. Dudich continued with his presentation.

- Local Code on Leases
 - Current city/county Revised Code provides procedures and policies regarding situations where the city/county is the lessor, but is limited in regarding to situations where the city is the lessee
 - Revised Code Chapter 186 relates to property disposal and leasing property to other entities
 - Review and approval where the city/county is the lessee is limited to the requirements in IC 36-1-10 and requirements in the Revised Code
 - Currently, Revised Code 141-101/102, 202-103 and individual board authority govern review and approval requirements for agency leases beyond those required by state law.

Councillor Sandlin asked if IC 36-1-10 also applies to equipment. Mr. Dudich stated the Code also includes other leases such as transportation; structures, etc.

Mr. Dudich stated that the Revised Local Code does not include very much detail on process or policy concerning the City or County entering a lease with a landlord. It also does not define other approvals such as OCC, OFM, etc. He added that because a contract must be reviewed and approved by OFM and OCC, there should be a better understanding of what a contract is. If an agency decides to enter into a lease without OCC's and OFM's knowledge, it is possible that the broker or landlord could also be drafting the lease without their knowledge.

Councillor Oliver asked how board may approve a lease without OFM or OCC's approval. Mr. Dudich stated that because of the ambiguity of the term "contract" it is possible that a lease was not considered to be a contract.

Councillor Sandlin stated that the lease was presented to the Administration and Finance Committee in 2011. He stated that there were questions regarding the signatures of OCC but the committee was told that OCC was not required to sign under the current policy.

Mr. Dudich continued with his presentation.

- Space Allocation Committee:
 - Role of the SAC was to:
 - Devise and propose workable solutions to the increased need for usable office space in the city-county building,
 - Make recommendations concerning the allocation of space
 - Seek more available parking under the management of the Building Authority
 - Review present allocation and use of building storage space
 - Review present allocation of parking
 - Review and revise prior professional space needs studies of the city-county building
 - Even though SAC was rescinded in 1992, a group of individuals focused on space allocation and resources has been meeting at the request of the Real Estate Manager and as space needs arise.
 - The Real Estate Manager can, if requested, serve as a broker and negotiator for city and county agencies/departments when working through leases with landlords

Councillor Gray asked if there are repercussions for creating a lease without proper approval. Mr. Dudich stated that if proper parameters were not followed during the creation of the lease, then legal action would need to be taken.

Councillor Lewis asked if an agency interested in creating a lease agreement should come before the Council for approval. Mr. Dudich stated the agency should appear before the Council to get approval for the need to lease. Once approved by the Council, the agency will then need to follow the guidelines to pursue the lease.

Councillor Hunter stated that there should be a checklist of the guidelines to be sure the lease agreement process is being completed according to local and state guidelines.

Mr. Dudich continued with his presentation.

- Concerns with Current Process
 - Revised Code Chapters 141-101 and 141-102 do not specifically note “leases”. Therefore OFM and OCC may not be involved in any lease discussions in the beginning and may not be included in the review and approval process
 - Revised Code Chapter 202-103 requires OCC to prepare leases. In some cases agencies/departments may have brokers or their own attorneys draft lease agreements, thereby circumventing OCC review
 - In IC 36-1-10-13 it notes “the leasing agent” shall hold public hearings and provide information on lease agreements. The “leasing agent” means the board or officer of a political subdivision or agency with the power to lease structures.
 - Role of the Council in reviewing leases is specific in the law. IC 36-1-10-7 notes “the fiscal body of the political subdivision determines, after investigation, that the structure ... is needed”
- Recommendations
 - Amend the Revised Code Chapter 141-101 so that both sections a (city) and b (county) expand the definition of a “contract” to include any leases, memorandums of understanding, inter-local agreements, or any other legally binding agreement
 - Create in Revised Code a Space Allocation Committee
 - Use the Real Estate Manager to manage the lease process
 - Establish a process and policy for review and approval of leases
 - Clearly define the role of each entity required to review and approve leases

Councillor Pfisterer stated the Council needs to be included in the leasing process because of effects on the budget. Mr. Dudich stated that OFM would review all lease agreements and determine whether enough funding is available in the budget. If additional funding is needed then it could be appropriated or denied.

Ms. Tribble stated that it was recently noticed that there was a disconnect between some of the agencies and OFM regarding leases. Because of that a new procedure has been set in place to send the leases directly to OFM once they are received. She asked if there is anything that precludes the Council from being included in identifying the need for the lease, as well as being including in the authorization of the lease. Mr. Biesecker stated that it will possibly require a change in state law.

Chair Simpson thanked Mr. Dudich for his presentation. He asked Mr. Biesecker to discuss the ROC development agreement.

Mr. Biesecker discussed the Development Agreement as well as the structure and provisions of the ROC lease (attached as Exhibit C). He made the following key points:

- The development agreement was signed on March 18, 2011 by Frank Straub for DPS, and Alex Carroll for the Landlord and Developer.
- The agreement authorized the start of construction of tenant improvements although the Council had not yet determined the need for the lease and the board of public safety had not yet approved the lease; and stated that "both parties have entered into a Bond Net Lease for the Premises."
- The Department of Public Safety agreed to indemnify the Landlord for construction costs not to exceed \$100,000.
- There is no indication that the Development Agreement was reviewed or approved by OFM or OCC or the Board of Public Safety.
- The agreement contains a general breakdown of the funding amount (included in Exhibit C)
- Timeline:
 - March 18, 2011 – Development Agreement signed.
 - April 11, 2011 – Council Resolution introduced (Proposal No. 102, 2011)
 - April 26, 2011 – Proposal No. 102 amended in committee to reduce the space being leased from 210,000 square feet to 76,000 square feet.
 - May 12, 2011 – Board of Public Safety approves Lease Agreement.
 - May 16, 2011 – Council passes Proposal No. 102.
 - May 20, 2011 – Lease Agreement signed by Frank Straub.
 - May 27, 2011 – Lease Agreement signed by Alex Carroll.
 - June 23, 2011 – Lease assigned to Wells Fargo Bank.
 - January 25, 2012 – ROC opens.

Councillor Lewis asked if the Administration and Finance Committee and the Public Safety Committee both approved a lease. Mr. Biesecker stated that both committees looked at the proposal; however, it was approved by the Administration and Finance Committee.

Councillor Gray asked if the lease assigned to Wells Fargo on June 23, 2011 means that Wells Fargo gave Mr. Carroll the money up front. Mr. Biesecker stated that he is unsure because he has not received a copy of the loan document. Councillor Gray asked who is responsible for the money given to Mr. Carroll. Mr. Biesecker stated that he has not received any documents stating that the City of Indianapolis is directly obligated on the loan, as opposed to the lease.

Chair Simpson asked if the City began paying rent with the ROC opened on January 25, 2012. Mr. Biesecker stated that the City did not begin making rent payments until January of 2013.

Mr. Biesecker continued with the presentation stating the following:

- The lease has a 25-year term.
- The total rent payable over the 25-year term will be \$18,249,999.
- Terms of concern in the lease agreement
 - Section 1(b) – Excludes all warranties by landlord. City bears all risks concerning the condition of the premises.

- Section 4(d) – If the appropriated funds are not sufficient to pay the rent, the lease can be terminated but the City is still liable for damages.
- Section 4(g) – If the lease is terminated, the City cannot purchase or lease alternative space for 365 days.
- Section 5(a) – City is not entitled to abatement or reduction of rent for any reason (with one narrow exception).
- Section 18(b) – Landlord can terminate lease on 15 days' notice, for any reason or no reason, and City still has to pay as damages the difference between all future rent under the lease and the rent paid by a replacement tenant.

Councillor Lewis stated that, in the future, it is very important that the Council is involved in the entire process, as issue such as this will have a negative impact on the City budget.

Chair Simpson called for public testimony.

With there being none, Chair Simpson stated that the next meeting will be held on Monday, February 10 at 5:30 in Room 260 and it is expected that the meeting discussion will revolve around the ROC development plans, safety issues and the use and occupancy of the building.

With no further business pending, and upon motion duly made, the Regional Operations Center Investigating Committee of the City-County Council was adjourned at 8:15 p.m.

Respectfully submitted,

Joseph Simpson, Chair
ROC Investigating Committee

JS/slp

Document Request Log
Regional Operations Center Investigating Committee


Documents Requested	Date of Request	Date Received	Notes
1. Development Agreement	10/2/2013	10/2/2013	
Exhibit A (Bond Net Lease)	11/15/2013		
Exhibit C (Phase I)	11/15/2013		
Exhibit D (Phase II)	11/15/2013		
Exhibit E (Phase III)	11/15/2013		
Exhibit F (Project Budget)	11/15/2013		
2. The property assessment report prepared by DLZ Indiana, LLC at the request of DPS in the fall of 2012.	11/15/2013	11/27/2013	
3. Documents sufficient to show all payments made by or on behalf of the City, directly or indirectly, to or for the benefit of Carroll or Carroll's affiliated entities.	11/15/2013	11/27/2013	Received escrow letter dated 12/21/12; check issued January 2013 to Wells Fargo in the amount of \$57,083.33.
4. The Mortgage, Security Agreement, Assignment of Lease and Rents and Fixture Filing Statement, dated as of June 23, 2011, and all amendments, supplements or other material changes thereto.	11/15/2013	11/27/2013	Received two letters and tenant estoppel certificate only.
5. Documents evidencing or relating to communications between the City and Carroll or Carroll's affiliated entities, for the period from January 1, 2010 through March 18, 2011, regarding the possibility of moving certain DPS operations to the North Shadeland Avenue location.	11/15/2013		
6. Documents evidencing or relating to the drafting, negotiation or execution of the Development Agreement.	11/15/2013		
7. Documents evidencing or relating to the drafting, negotiation or execution of the Lease.	11/15/2013		
8. Documents evidencing or relating to communications between the City, the NFL, and federal authorities regarding the proposed use of the ROC for Super Bowl security operations.	11/15/2013		
9. All post-execution amendments, supplements, or other material changes to the terms of the Development Agreement or the Lease.	11/15/2013	12/16/2013	Received December 2013 Settlement Agreement and plans related thereto.
10. Documents provided to the Council or Council committees or individual Council members relating to the Council's consideration and passage of Proposal No. 102, 2011.	11/15/2013		
11. Meeting minutes of the Board of Public Safety relating to the ROC.	11/15/2013	12/30/2013	Received minutes to three meetings.

Document Request Log
Regional Operations Center Investigating Committee

Documents Requested	Date of Request	Date Received	Notes
12. Documents provided to the Board of Public Safety or its individual members relating to the ROC.	11/15/2013		
13. Contracts relating to the ROC, including but not limited contracts for design, construction, renovation, repair, maintenance, safety, security, inspection, and code compliance. This request includes initial plans, drawings, specifications and scopes of work.	11/15/2013	11/27/2013 and 12/30/2013	Received contracts with Koorsen, Bruce Baun, and Robert Zickler only; received plans dated March 2011 and July 2011.
14. Documents evidencing or relating to the determination of and distribution of the "return of the Landlord's basis" as described in paragraph 7(b) of the Development Agreement.	11/15/2013		
15. Documents evidencing or relating to the determination of the cost estimates set forth in paragraphs 7 and 8 of the Development Agreement.	11/15/2013		
16. Documents evidencing or relating to the implementation of the funding and disbursement provisions set forth in paragraphs 7 and 8 of the Development Agreement.	11/15/2013		
17. Documents evidencing or relating to DPS's agreement to indemnify the Landlord as set forth in paragraph 3 of the Development Agreement.	11/15/2013		
18. Documents evidencing or relating to the design and construction of the Tenant Improvements on the Premises (Phases I, II and III), as those terms are defined and used in the Development Agreement.	11/15/2013		
19. Punch lists prepared by the City or its representatives and documents related thereto.	11/15/2013		
20. Documents evidencing or relating to changes to the initial plans, drawings and specifications, scopes of work, project schedule, or project budget with respect to the Tenant Improvements. This includes but is not limited to approved change orders.	11/15/2013		
21. Documents evidencing or relating to invoices and payment of invoices with respect to the Tenant Improvements.	11/15/2013	11/27/2013	Received fire watch invoices; insurance coverage documents.

Document Request Log
Regional Operations Center Investigating Committee

<u>Documents Requested</u>	<u>Date of Request</u>	<u>Date Received</u>	<u>Notes</u>
22. Documents evidencing or relating to progress reports, inspection reports, draw requests, certificates of substantial completion, jobsite meeting minutes, schedule and budget updates, and lien waivers with respect to the Tenant Improvements.	11/15/2013		
23. Documents evidencing or relating to the City's consideration of locations for the ROC other than the North Shadeland Avenue location.	11/15/2013		
24. Documents evidencing or relating to any plan reviews done prior to beginning construction of the Tenant Improvements.	11/15/2013		
25. Documents evidencing or relating to how DPS proposed to pay for the Lease.	11/15/2013		
26. Documents evidencing or relating to the decision to use a credit-tenant lease financing structure.	11/15/2013	11/27/2013	Received only a Credit Tenant Lease presentation from William Blair & Company.
27. Documents evidencing or relating to alleged non-compliance with code requirements, including but not limited to fire marshal inspection reports, stop work orders, test reports, engineering reports, and certifications concerning the fire suppression system.	11/15/2013	11/27/2013	Received August 2012 health dept. report; 10/19/12 letter to Alex Carroll from OCC; 7/2011 power compliance report.
28. All agreements between the City and Carroll or Carroll's affiliated entities, including but not limited to settlement agreements.	11/15/2013	12/16/2013	See requests 1 and 9.
29. All agreements to which the City is a party relating to the financing of the Lease or the performance of the Tenant Improvements.	11/15/2013	11/27/2013	See requests 1, 9, and 13.
30. Documents evidencing or relating to communications between the City and Wells Fargo Bank, including but not limited to the creation of an escrow account for the Lease payments and the activity records for that escrow account.	11/15/2013	11/27/2013	Received escrow letter dated 12/21/12; check issued January 2013 in the amount of \$57,083.33.




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Never Grow Up Again

City and County Real Estate Leases: Review of Process and Policies

City-County Council – Regional Operations Center Investigating Committee

Presented by the Office of Corporation Counsel and the Office of Finance and Management

January 8, 2014



Office of Finance & Management
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Focus Points

- **Review current laws that govern leases**
- **Focus on laws, policies and procedures when the city/county is the lessee**
- **Define the current role of the agency, OFM, OCC, Space Allocation Working Group and the Council**
- **Suggest potential changes to lease policies and procedures**

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Indiana State Law

Office of Planning & Management
Indianapolis
Mayor Greg Evers, R. Balliet



- Indiana Code 36-1-10 governs leases at the local level
- Provides for the process and policies regarding a political subdivision as the lessee
- Sets forth who the political subdivision may lease from, the term of the lease, process for lease approvals, funding of leases, etc.
 - Regarding who may lease, the law states the leasing agent (IC 36-1-10-2) is the entity which has the power to lease structures
 - A leasing agent is defined as "the board or officer of a political subdivision or agency with the power to lease structures."
- Includes leases with and without an option to purchase at the end of the lease
- *Indiana Code 36-1-11 applies when the political subdivision is the lessor*

3

Details of IC 36-1-10

Office of Planning & Management
Indianapolis
Mayor Greg Evers, R. Balliet



- A leasing agent may lease from a profit or not-for-profit organization, a partnership, association, limited liability company, or a firm or an individual
- Leases without an option to purchase must include a termination for failure of funding clause
- Leases without an option to purchase can be signed for up to 10 years, anything longer must be approved by the Department of Local Government Finance
- Leases with an option to purchase can be up to 50 years

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Details of IC 36-1-10 Cont.

Official Website of the
Indianapolis
Police Department



- **The leasing agent may lease the structure only if:**
 - It has received a petition signed by 50 or more taxpayers of the political subdivision and,
 - The fiscal body of the political subdivision has determined that there is a need to lease space
- Once lessor and the leasing agent have gained approval from the fiscal body and acquired the necessary taxpayer signatures, lease negotiations may commence
- Once lease terms are reached, but before the lease is executed, a public hearing must be held by the leasing agent
- Notice requirements for the public hearing are set forth in the law as to what should be provided at the public hearings, the timeframe for such hearings, etc.
 - Includes summary of the lease terms, name of proposed lessor, location of the structure, the rental to be paid, term of the lease, and other information
- Modifications and changes may be made to the lease after the public hearing, but the rental amount cannot be increased above the amount published in the notification

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Details of IC 36-1-10 Cont.

Official Website of the
Indianapolis
Police Department



- Once public hearing is completed and adjustments are made (if necessary), the leasing agent and the lessor may execute the lease
- Upon execution of the lease (as originally agreed upon or modified), the leasing agent shall give notice of execution of the lease by publication in accordance with IC 5-3-1
- If any of the lease payments are made from property taxes, in whole or part, 10 or more taxpayers who disagree with the execution of the lease may file a petition with the County Auditor within 30 days after the publication of notice of the executed lease
- The County Auditor shall immediately certify a copy of the petition and other information to the Department of Local Government Finance, who shall then fix a date and time for a hearing within no less than 5 days and no more than 30 days after the receipt of the documents
- Decisions by the Department of Local Government Finance are final

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Local Code on Leases

Official Website of Indianapolis
Mayor Gregory A. Evers



- Current city/county Revised Code provides procedures and policies regarding situations where the city/county is the lessor, but is limited in regarding to situations where the city is the lessee
- Revised Code Chapter 186 relates to property disposal and leasing property to other entities
- Review and approval where the city/county is the lessee is limited to the requirements in IC 36-1-10 and requirements in the Revised Code
- Currently, Revised Code 141-101/102, 202-103 and individual board authority govern review and approval requirements for agency leases beyond those required by state law.

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Space Allocation Cmte

Official Website of Indianapolis
Mayor Gregory A. Evers



- Created by Executive Order in 1979
- Rescinded in 1992
- Role of the SAC was to:
 - Devise and propose workable solutions to the increased need for usable office space in the city-county building,
 - Make recommendations concerning the allocation of space
 - Seek more available parking under the management of the Building Authority
 - Review present allocation and use of building storage space
 - Review present allocation of parking
 - Review and revise prior professional space needs studies of the city-county building
- The committee consisted of 11 members appointed by the Mayor and included individuals from the Council, Courts, County Commissioners, etc.

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Space Allocation Cmte. Cont.

Office of Finance & Management
Indianapolis
Mayor's Department of Public Works



- Even though SAC was rescinded in 1992, a group of individuals focused on space allocation and resources has been meeting at the request of the Real Estate Manager and as space needs arise
- The working group closely resembles the make up of the SAC created in 1979, but has no legal authority or decision making power
- As city/county agencies or departments negotiate lease agreements or seek new space, it is possible they may approach the current space allocation working group to seek advice on the need for space, lease agreements or other space concerns

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Real Estate Manager

Office of Finance & Management
Indianapolis
Mayor's Department of Public Works



- Real Estate Manager position in OFM focuses on the management of real estate owned or leased by the city/county
- Position was created to coordinate city/county real estate/property from an enterprise wide prospective
- Works with city and county agencies/departments and the Building Authority on real estate issues, leases and property management
- The Manager can, if requested, serve as a broker and negotiator for city and county agencies/departments when working through leases with landlords
- Currently the position leads the space allocation working group

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Departments/Agencies

Office of Finance & Management
Indianapolis
Mayor Stephen R. Goldsmith

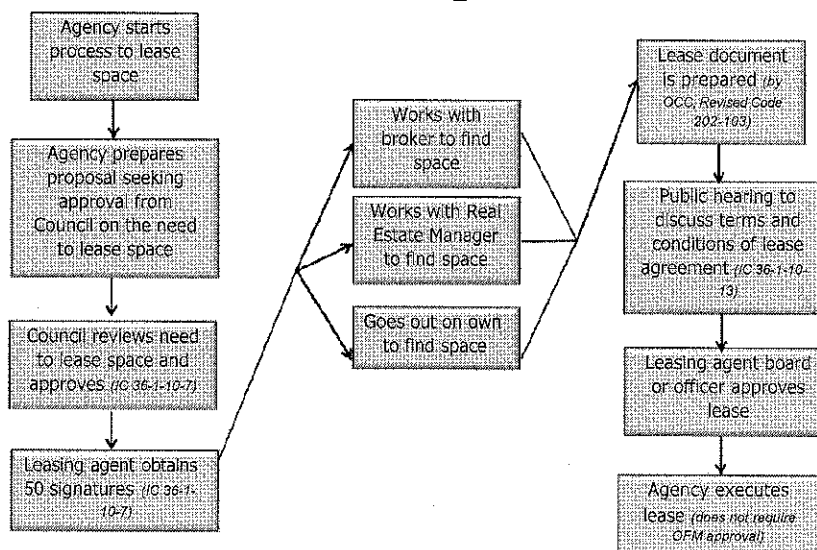


- City/County departments and agencies (leasing agents) start the process of leasing space
- Proposals are filed by departments and agencies with the Council to seek approval for the need to lease space and signatures are acquired from taxpayers
 - Need to lease proposals can be filed without the knowledge of OFM and OCC
- Departments and agencies then can work with an outside broker, the Real Estate Manager or on their own to identify space, discuss terms and conditions and start the process of creating a lease document
- By law (Revised Code Chapter 202-103) agencies and departments must use OCC to prepare lease documents, but its possible these documents are prepared by outside entities without OCC review
- Agencies must then follow the requirements of IC 36-1-10 to execute the lease agreement

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Lease Process Example

Office of Finance & Management
Indianapolis
Mayor Stephen R. Goldsmith



12

Concerns with Current Process

Office of Planning & Management
Indianapolis
Mayor Gregor A. Ballard



- Revised Code Chapters 141-101 and 141-102 do not specifically note "leases". Therefore OFM and OCC may not be involved in any lease discussions in the beginning and may not be included in the review and approval process
- Revised Code Chapter 202-103 requires OCC to prepare leases. In some cases agencies/departments may have brokers or their own attorneys draft lease agreements, thereby circumventing OCC review
- By not requiring OCC and OFM to review and approve leases creates the ability for agencies/departments to enter into leases without legal or financial review, which can result in inconsistent terms and failure to comply with state and local law
- In some cases, agencies/departments have included OFM, OCC and the space allocation working group in lease discussions and options before approaching Council for approval, e.g. Public Defender lease in 2013

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Concerns with Current Process Cont.

Office of Planning & Management
Indianapolis
Mayor Gregor A. Ballard



- In IC 36-1-10-13 it notes "the leasing agent" shall hold public hearings and provide information on lease agreements. The "leasing agent" means the board or officer of a political subdivision or agency with the power to lease structures.
- Role of the Council in reviewing leases is specific in the law. IC 36-1-10-7 notes "the fiscal body of the political subdivision determines, after investigation, that the structure ... is needed"
- The space allocation working group is not mandatory when reviewing and approving leases before they are sent to Council. The space allocation working group can be a resource to agencies/departments, OCC and OFM when dealing with leases

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Recommendations

Official's Signature & Stamp
Indianapolis
Mayor Gregory A. Ballard



After review by OFM and OCC, the Committee should consider the following recommendations to ensure leases are reviewed and approved by appropriate entities and that state and local laws are followed appropriately

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Recommendation 1

Official's Signature & Stamp
Indianapolis
Mayor Gregory A. Ballard



- Amend the Revised Code Chapter 141-101 so that both sections a (city) and b (county) expand the definition of a "contract" to include any leases, legally binding agreements, memorandums of understanding, inter-local agreements, or any other legally binding agreement
- This would require any type of legally binding agreement to be reviewed and approved by OFM and OCC, including all leases or agreements to lease space or structures

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Recommendation 2

City of Indianapolis
Office of Management & Enterprise Services
Indianapolis
Mayor's Office of Management & Enterprise Services



- Create in Revised Code a Space Allocation Committee
- The structure of the Committee could include entities like OCC, OFM, the Building Authority, the Council and other entities that review space needs and are involved in the review of changes in space allocation
- The Committee could be required to review lease and space needs and make recommendations to the Council on the need to lease space as required by IC 36-1-10-7
- The Committee could assist the leasing agents in carrying out the requirements under IC 36-1-10-13 regarding public hearings on leases

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Recommendation 3

City of Indianapolis
Office of Management & Enterprise Services
Indianapolis
Mayor's Office of Management & Enterprise Services



- Use the Real Estate Manager to manage the lease process
- As agencies/departments start the process to lease space, the Real Estate Manager should be the first person to start the process
- If the Real Estate Manager serves as the Chair of the Space Allocation Committee, the individual would be able to oversee lease transactions from start to finish, working with the agency/department, OFM, OCC, Council, the public and landlords
- Require, as policy, that agencies/departments initiate discussions with the Real Estate Manager when the need to lease space, renew leases or have lease questions occurs

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Recommendation 4

Official Website & Information
Indianapolis
Mayor Gregory A. Evers



- Establish a process and policy for review and approval of leases
- OFM, OCC and the Council should develop a process and policy document that dictates how city/county agencies/departments should proceed when seeking to lease space
- The process and policy should include the requirements set forth in IC 36-1-10 and Revised Code Chapters 141-102 and 202-103, the Space Allocation Committee and the Real Estate Manager
- A step by step process, along with required review and approvals before a lease can be executed, will allow agencies, the Council and the public to be informed on the process regarding lease approvals

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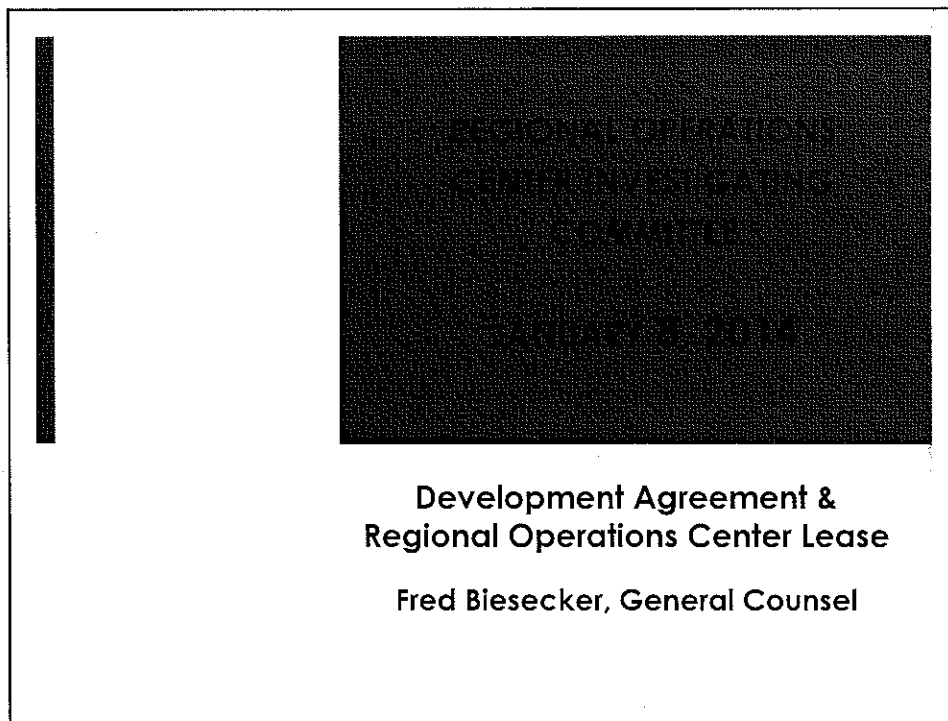
Recommendation 5

Official Website & Information
Indianapolis
Mayor Gregory A. Evers

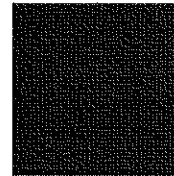


- Clearly define the role of each entity required to review and approve leases
- OFM and OCC's role is to review for legal and financial purposes
- Agency/Departments role is to request the need to lease space and work with various entities to seek approval to lease space
- SAC's role could be conduct public hearings on leases, review and approve lease and space needs, and make recommendations to the Council regarding the need to lease space
- Council's role would be to determine the need to lease space
- These roles could be laid out in the policy and process noted in Recommendation 4

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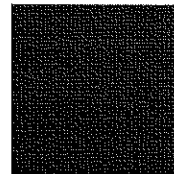


DEVELOPMENT AGREEMENT CONTINUED



- Authorized the start of construction of tenant improvements although the Council had not yet determined the need for the lease and the board of public safety had not yet approved the lease.
- Stated that "both parties have entered into a Bond Net Lease for the Premises."
- DPS agreed to indemnify the Landlord for construction costs not to exceed \$100,000.
- No indication that the Development Agreement was reviewed or approved by OFM or OCC or the Board of Public Safety.

DEVELOPMENT AGREEMENT: FUNDING FROM CREDITORS



- (a) \$2,200,000 to pay off M&I Bank note.
- (b) \$3,600,000 for "a return of the Landlord's basis."
 - \$1.6 million to be disbursed at closing;
 - \$1.0 million to be disbursed when Phase II is roughed in and;
 - \$1.0 million to be disbursed when Phase II and the garage are complete.
- (c) \$7,034,714 to fund the construction required for the tenant improvements for Phases I, II and III.
- (d) \$1,384,552 for soft costs related to the project.
 - Subtotal of construction and soft costs: \$8,428,266
 - Total funding from Creditors: \$14,228,266

TIMETABLE

- March 18, 2011 – Development Agreement signed.
- April 11, 2011 – Council Resolution introduced (Proposal No. 102, 2011)
- April 26, 2011 – Proposal No. 102 amended in committee to reduce the space being leased from 210,000 square feet to 76,000 square feet.
- May 12, 2011 – Board of Public Safety approves Lease Agreement.
- May 16, 2011 – Council passes Proposal No. 102.

TIMETABLE CONTINUED

- May 20, 2011 – Lease Agreement signed by Frank Straub.
- May 27, 2011 – Lease Agreement signed by Alex Carroll.
- June 23, 2011 – Lease assigned to Wells Fargo Bank.
- January 25, 2012 – ROC opens.



REGIONAL OPERATIONS CENTER LEASE AGREEMENT



LEASE AGREEMENT - BASIC TERMS

- Dated as of May 20, 2011.
- Initial term of 25 years; 1/1/13-12/31/37
- City has option to renew for up to an additional 20 years or option to purchase at expiration of initial term.
- Monthly rent is \$57,083.33 for the first 120 months and \$63,333.33 for the final 180 months.
- Total rent payable over initial 25 year term: \$18,249,999.

FISCAL IMPACT

	2013-2022	2023-2037
Estimated Costs		
Lease Payments	\$ 685,000	\$ 760,000
Allowance for Maintenance	\$ 95,000	\$ 114,000
Allowance for Utilities	\$ 114,000	\$ 114,000
Total	\$ 8,940,000	\$ 14,820,000
 Grand Total for 2013-2037	 <u>\$ 23,760,000</u>	

LEASE AGREEMENT – SELECTED TERMS

- Section 1(b) – Excludes all warranties by landlord. City bears all risks concerning the condition of the premises.
- Section 4(d) – If the appropriated funds are not sufficient to pay the rent, the lease can be terminated but the City is still liable for damages.
- Section 4(g) – If the lease is terminated, the City cannot purchase or lease alternative space for 365 days.
- Section 5(a) – City is not entitled to abatement or reduction of rent for any reason (with one narrow exception).

**LEASE AGREEMENT – SELECTED TERMS
CONTINUED**

- Section 5(c) – City may not act to terminate or rescind the lease even if the landlord goes bankrupt.
- Section 6(b) – City is responsible for compliance with all codes (including environmental) at City's sole expense.
- Section 8 – City gives broad indemnification to landlord.
- Section 9(a) – City waives any right to require landlord to maintain, rebuild or repair.
- Section 18(a) – City has eight different ways to default; landlord has none.

**LEASE AGREEMENT – SELECTED TERMS
CONTINUED**

- Section 18(b) – Landlord can terminate lease on 15 days' notice, for any reason or no reason, and City still has to pay as damages the difference between all future rent under the lease and the rent paid by a replacement tenant.